

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONVERGEN ENERGY LLC, L'ANSE WARDEN
ELECTRIC COMPANY, LLC, EUROENERGY
BIOGAS LATVIA LIMITED, and LIBRA CAPITAL
US, INC.

Plaintiffs,

-against-

STEVEN J. BROOKS, NIAN TICVISTA ENERGY
LLC, GREGORY MERLE, RIVERVIEW ENERGY
CORPORATION, DANIEL ESCANDON GARCIA,
RAMON URIARTE INCHAUSTI, CHIPPER
INVESTMENT SCR, SA, URINCHA SL, THEODORE
JOHN HANSEN, BRIAN R. MIKKELSON, and
CONVERGEN ENERGY WI, LLC,

Defendants.

Index No. **1:20-cv-03746** (LJL)

**DECLARATION OF BERT DIAZ IN OPPOSITION
TO SPECIALLY APPEARING DEFENDANTS' MOTION TO DISMISS**

I, Bert Diaz, declare as follows:

1. I am General Counsel at Libra. I make this declaration based on my own personal knowledge, and, if called upon to do so, could and would testify competently thereto. I make this declaration in opposition to Specially Appearing Defendants' Motion to Dismiss.

2. I make this declaration based on my own personal knowledge, and, if called upon to do so, could and would testify competently thereto.

3. I had no intention of relinquishing the fraud claims with the amended closing statement. The amended closing statement reflects post-closing adjustments; it is not a "second closing," as Defendants contend, nor is it ratification of the fraudulently obtained sale price.

4. At the time, Libra was seeking to require Steven Brooks (“Brooks”) to repay the shortfall between the fraudulent purchase price and the fair market price as determined by an independent valuation of the pellet plant. Libra expressly required the independent valuation to be completed before determining the amount of Brooks’ liability to Libra.

5. Attached as Exhibits A and B are true and correct of the following documents:

Exhibit A: Convergen Energy LLC’s Employee Handbook.

Exhibit B: Nianticvista Energy LLC letter of intent to acquire Convergen Energy WI, LLC.

I declare under the penalty of perjury that the foregoing is, to the best of my knowledge and belief, true and correct.

Dated: New York, New York
July 31, 2020

/s/ Bert Diaz
Bert Diaz